

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19083 of 2008

=====

Janardan Prasad, S/o Late Ramdhani Ram, resident of village- Malawan, P.S. Ashthama, District Nalanda, presently posted as Assistant in the Water Resources Department, Government of Bihar.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Water Resources Department, Government of Bihar, Patna
3. The Director, Land Acquisition and Rehabilitation, Water Resources Department, Government of Bihar, Patna
4. Joint Secretary, Water Resources Department, Government of Bihar, Patna
5. The Under Secretary, Water Resources Department, Government of Bihar, Patna
6. The Special Land Acquisition Officer, Gandak Project, Saran, Chapra

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Satish Chandra Jha 3, Advocate

For the Respondent/s : Mr. Hari Shanker Roy, AC to PAAG 1

=====

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 07-02-2017

Heard Shri Satish Chandra Jha, the learned counsel for the petitioner, and Shri Hari Shanker Roy, learned AC to PAAG 1.

2. The petitioner seeks following relief:-

“(i) To quash the order dated 07.05.2005 (Annexure-2), as contained in memo No. 1753, by which following punishments have been inflicted upon the petitioner:-

(i) censure for the year 2002-03;

(ii) stoppage of two increments with non-cumulative effect;

(iii) nothing shall be paid for the period of suspension except subsistence allowance.

(ii) To quash the appellate order dated 25.10.2006



(Annexure-1) whereunder the appeal preferred by the petitioner against Annexure-2 has been rejected and the punishment order was upheld.

(iii) To direct the respondents to make payment of difference amount of subsistence allowance at the rate of 75% for the period 19.07.2004 to 06.05.2005”.

3. The facts, which are relevant for disposal of the writ petition, are that the petitioner was working as an Assistant in Water Resources Department. In contemplation of a departmental proceeding, for making notes in the file of Ram Swaroop Prasad, Surveyor, Special Land Acquisition Office, Gandak Project, Chapra for sanction of leave of 67 days, the petitioner was suspended vide order dated 18.07.2003, as contained in memo No. 5915. The memo of charge was given and one Laxmeshwar Jha, Director, Land Acquisition and Rehabilitation, was appointed as enquiry officer. The petitioner was charged that he caused delay in making note for grant of leave to Ram Swaroop Prasad. The petitioner filed his detailed show cause on 15.09.2003. The enquiry conducting officer submitted his report on 28.11.2003. On receipt of enquiry report, the disciplinary authority issued second show cause to the petitioner. The petitioner filed a petition that he was charged for causing delay in processing the leave petition of Ram Swaroop Prasad but second show cause notice



was issued on different facts that the petitioner made contradictory notes on the file for sanction of leave. The petitioner asked for such contradictory notes but the same was not supplied to the petitioner. Even then the petitioner filed his reply to the second show cause notice. Thereafter, the disciplinary authority inflicted punishment, awarding censure, stoppage of two increments with non-cumulative effect and forfeiture of salary and other allowances, save and except subsistence allowance, during the period of suspension, and the same was affirmed in the appeal.

4. Mr. Satish Chandra Jha, the learned counsel for the petitioner, submits that the orders impugned do not show that the points raised by the petitioner in reply to the second show cause notice have been considered and they are absolutely non speaking. No reason has been assigned in the orders. It is further submitted that petitioner was departmentally proceeded for causing delay in processing the leave petition of Ram Swaroop Prasad but second show cause notice was issued against the petitioner that he made contradictory notes in the file, which was processed for sanction of leave to Ram Swaroop Prasad, but on demand the notes were not furnished to the petitioner. Therefore, the order, without considering the reply of petitioner to the second show cause notice, is bad and violative of principles of natural justice.



5. The learned counsel for the petitioner further submits that the salary and other allowances of the petitioner, during the period of suspension, save and except subsistence allowance, were also forfeited. Clause (3) of Rule 97 of Bihar Service Code envisages that if the delinquent is not found guilty and the charges are not proved in the departmental proceeding, the disciplinary authority shall pass order with regard to payment of salary and other allowances, during suspension period, after issuing notice to the delinquent but no notice was issued to the petitioner.

6. The learned counsel for the petitioner has placed reliance upon a judgement of Division Bench of this court reported in **1988 PLJR 82 (Mahabir Prasad vs. the State of Bihar & Ors.)** wherein it is held that notice before passing any order with regard to forfeiture of salary and other allowances during suspension is must and non compliance of the same vitiates the order.

7. On the other hand, Shri Hari Shanker Roy, the learned AC to PAAG 1, has contended that the order does not require any interference as the punishment is of minor nature and in writ jurisdiction this court is not legally entitled to look into the every minutes of the departmental proceeding if it is not shown that any illegality is committed during the departmental proceeding. It is further submitted that so far as notice, as required before forfeiture of



salary and other allowances, is concerned, to that extent the order appears to be bad.

8. In pursuance of second show cause notice the petitioner filed his reply vide Annexure-9 on 08.09.2004 but from perusal of Annexure-2, the order of disciplinary authority dated 07.05.2005, it appears that none of the points raised by the petitioner was considered. The order itself shows that the points raised by the petitioner have not at all been considered and simply it is stated that, after considering the enquiry report and reply of the petitioner to the second show cause notice, the aforesaid punishment was inflicted. Therefore, I find that the order is non speaking and it violates the principles of natural justice as the evidence or explanation given by the petitioner in his reply have not at all been considered. The appellate order, as contained in Annexure-1, also does not reflect consideration of evidence and points raised by the petitioner in his reply to second show cause notice.

9. Clause 3 of Rule 97 of Bihar Service Code clearly mandates that if the disciplinary authority contemplates to forfeit any part of salary and other allowance of the delinquent, during his suspension period, notice must be given to him. No such notice was given.

10. Considering the facts aforesaid, I find that the order



dated 07.05.2005, as contained in Annexure-2, and appellate order dated 25.10.2006, as contained in Annexure-1, are not sustainable and are quashed. The matter is remitted to the disciplinary authority to pass order afresh with reason after considering the reply of petitioner to the second show cause notice.

This writ petition is allowed.

(Prabhat Kumar Jha, J)

BKS/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	20.02.2017
Transmission Date	N.A.

